

The Defense Institute of Security Assistance Management (DISAM) and the Defense Acquisition University (DAU) collaborated to create this learning guide. Given the volume of Foreign Military Sales (FMS) requirements flowing through DoD's acquisition processes, it is likely that DoD contracting personnel will, at some point in their career, be responsible for acquiring material and services in support of FMS requirements. Personnel in other career fields may also find this FMS related contracting information helpful.

For further background on FMS, students should refer to other training resources such as DISAM's 2-hour online Security Cooperation Familiarization Course (SCM-FA-OL) and the 15-hour Security Cooperation Orientation Course (SCM-OC-OL). Information regarding DISAM's resident courses is available at the DISAM website: www.disam.dsca.mil.



The primary purpose of this learning module is to inform contracting personnel of the FMS related contracting policies and to enlist their support to leverage the FMS contracting process to achieve broader national goals.

The FMS program supports both national security and foreign policy goals of the US Government by equipping international partners with the defense capabilities to provide for their own national defense as well as enabling them to work with the US on other regional and international defense, humanitarian and peacekeeping activities.

Inherent in its name, Foreign Military Sales represents a procurement program. Under FMS, an authorized international partner is procuring defense articles or services from the US Government. Although many FMS orders are filled from existing DoD inventories, most major FMS items will be supplied directly from contracted sources. As such, the effectiveness of the particular FMS program is directly related to the contract performance.

Given these realities, the challenge to the DoD contracting community to view FMS contracting as more than just another business activity. Each FMS procurement contributes to fulfilling a USG commitment to international partner, strengthens foreign policy relationships, equips a partner for their own defense and collectively promotes our own US national security.

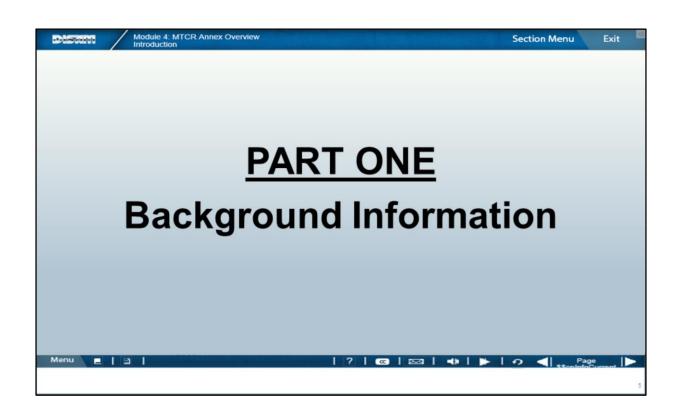


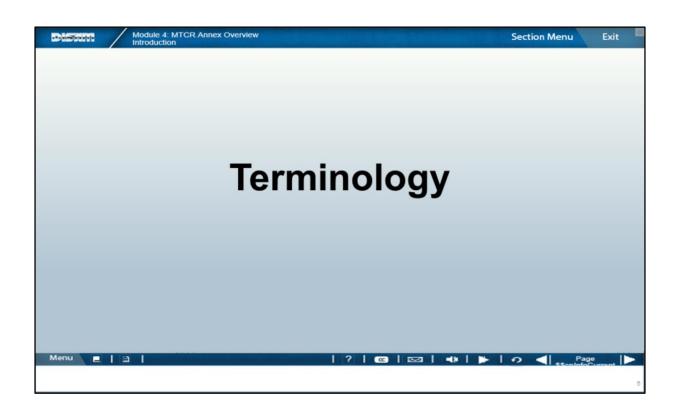
This learning guide is divided into two parts. Part one provides some basic background information to include: Terminology, Organizational Roles & Responsibilities, Magnitude of FMS, and a FMS Process Overview.



Part 2 of this learning guide outlines the policies for contracting to include the following:

- Contract Officer Role in LOA Preparation
- General Policy Guidance
- Impact of LOA Funding Source
- Contracting for Building Partner Capacity
- Customer Involvement in Contracting
- Sole Source
- Contract Pricing
- Contingent Fees
- Warranties for FMS
- Offsets
- Contract Clauses





It is important to recognize some key terminology associated with FMS.



The USG has global interests and the DoD must be prepared to protect those interests. In order to effectively and efficiently perform this national security responsibility, DoD must engage with its allies and other friendly governments around the world. The DoD dictionary uses the term "Security Cooperation" to describe its overall set of interactions with foreign defense establishments to build defense relationships that promote specific US security

interests, develop allied and friendly military capabilities for self-defense and multinational operations, and provide US forces with peacetime and contingency access to a host nation..

The FMS program is an important program that supports DoD security cooperation efforts. FMS is a means by which allied and friendly governments acquire the defense capabilities for self-defense and for interoperable participation in multinational operations. The relationships established through the FMS program contribute to providing DoD access to key host nation personnel, in-country facilities, territory, and airspace. For more information about security cooperation recommend you review the DISAM textbook, *The Management of Security Cooperation*, Chapter 1 Introduction to Security Cooperation.

It is important to note that FMS is not just a program for the benefit of the purchasing country. In addition to benefitting the purchasing country, FMS also benefits the USG by enabling DoD to perform its national security mission more efficiently and effectively by equipping, training and sustaining its foreign partners around the world.



The Department of State is responsible for promoting US foreign policy. DoS operates a group of programs collectively referred to as "Security Assistance". FMS is a security assistance program that provides allied and friendly nations with defense articles, services and training in furtherance of US national policies and objectives. Although FMS is a DoS security assistance program, the DoD administers the execution FMS program as authorized by the DoS.

For more information about security assistance recommend you review the DISAM textbook, *The Management of Security Cooperation*, Chapter 1 Introduction to Security Cooperation.



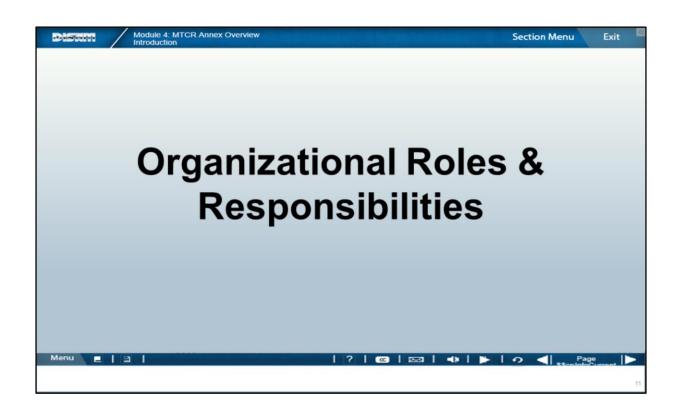
This is a visual representation of what has been described. FMS functions to support both the security assistance foreign policy goals of the DoS and the security cooperation national security goals of the DoD. Because DoD executes the FMS program on behalf of the DoS, the DoD generally refers to FMS as one of its several security cooperation activities.



Now that we understand how FMS relates to the DoS foreign policy role as a security assistance program and to the DoD national security role as a security cooperation activity, we must look one step deeper to realize that not all FMS is the same.

There are actually three fundamental varieties of FMS programs. Traditional FMS involves the foreign purchaser directly funding FMS programs with their own national funds. The next variety involves those programs that the DoS determines to be essential but the purchaser is unable to fund from their own resources. As such, the DoS justifies the need for USG funding in the annual DoS budget submission. Typically, FMS programs in this category are funded by nonrepayable grants through the Foreign Military Financing (FMF) program. FMF funds are typically required to be expended through the FMS program. The third variety are those programs for which the Congress has provided other legislative authority to fund via other appropriated funds. Most often these are funds that have already been appropriated to DoD. When these USG appropriated funds are administered through the FMS infrastructure, they are called Building Partner Capacity (BPC) programs.

As will be emphasized later in this presentation, the contracting community must be aware of the type of funding that applies to the particular FMS procurement because different policies apply to the different funding sources. At this point, the fundamental concept to remember is that FMS is not one monolithic program. There are different types of FMS contracting actions based upon the different types of FMS fund sources.



Now we will briefly review the organizational roles and responsibilities for executing FMS programs within the DoD.

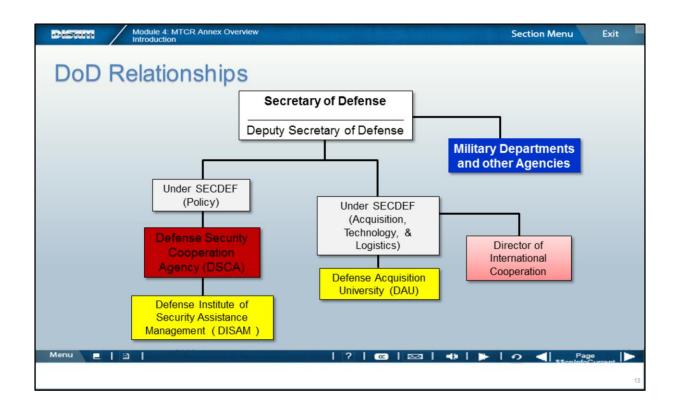


The Defense Security Cooperation Agency (DSCA) is the central DoD entity that leads, manages and oversees the execution of security cooperation programs. A 3-star flag officer, currently VADM Joeseph Rixey, serves as the agency director. DSCA reports to the Undersecretary of Defense for Policy (USD(P)) and advocates for security cooperation related initiatives and programs within the DoD, with the DoS, with the ongress, with industry and with foreign partners.

DSCA also issues the formal policy for executing security cooperation programs via the Security Assistance Management Manual (SAMM) which is available online at www.dsca.mil/samm. The SAMM contains 16 chapters titled:

- 1 SC Overview and Relationships
- 2 Security Cooperation Organization and Case Manager Responsibilities
- 3 Technology Transfer and Disclosure
- 4 FMS Program General Information
- 5 FMS Case Development
- 6 FMS Case Implementation and Execution
- 7 Transportation
- 8 End-Use Monitoring (EUM)
- 9 Financial Policies and Procedures
- 10 International Education and Training
- 11 Special Programs and Services
- 12 Humanitarian Assistance, Mine Action, and Foreign Disaster Relief Programs
- 13 Security Cooperation Information Technology Systems
- 14 Forecasting, Planning, Programming, Budgeting, and Audits
- 15 Building Partner Capacity Programs
- 16 Case Reconciliation and Closure

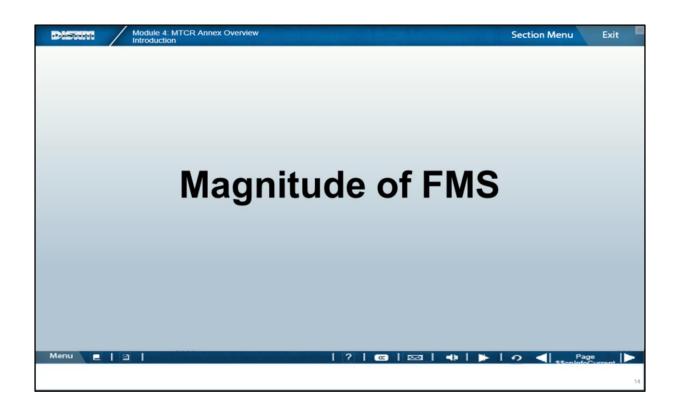
Lastly, DISAM serves as DSCA's schoolhouse to provide security cooperation education and training to USG civilians, DoD military members and foreign partner representatives.



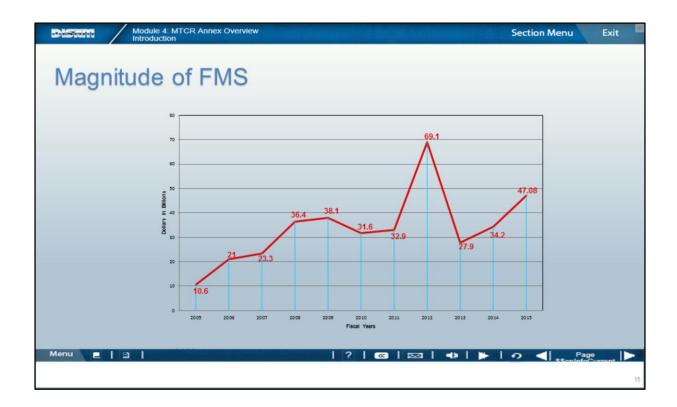
The contracting community is familiar with the roles and relationships in the USD(AT&L) chain of command. This chart correlates the USD(AT&L) structure to the parallel structure for the USD (Policy). DISAM serves as the educational and training arm of DSCA in a similar manner as DAU serves as the education and training arm of USD (AT&L).

The USD (AT&L) oversees international cooperative acquisition programs via the Director of International Cooperation. International cooperative acquisition programs are a different form of security cooperation and are not managed by DSCA. DAU offers several online and in-resident courses on international cooperative acquisition programs. More information is at the DAU website: www.dau.mil.

Ultimately, the three varieties of FMS programs are executed via the acquisition and logistics infrastructure and workforce already embedded within with the military departments and other DoD agencies that are authorized to prepare FMS agreements. These relationships will be discussed later in this learning guide.



FMS represents a substantial volume of acquisition and logistics activity with the DoD.



This chart represents the cumulative new FMS agreements by fiscal year in billions of dollars. The FY12 sales spike is driven largely by a major total package F-15 sale.

Although a high quantity of FMS orders are filled from inventory assets, in terms of dollars spent, these inventory shipments typically are for relatively low cost items. The majority of FMS dollars are expended through DoD's contracting activities. Most all major weapon systems and significant equipment items, services and construction activities are supplied to international partners as deliveries from DoD procurement contracts.

The primary point of emphasis for DoD's contracting professionals is that the FMS program is big business. The overall success of the FMS program largely relies on the contracting expertise resident within DoD in order to successfully fulfill sales commitments to our international partners. FMS brings a large scale influx of requirements to be supported and dollars to be expended via DoD's contracting community. As such, it is probable that DoD contract personnel will be responsible for supporting FMS requirements at some point in their career. In addition to the core contracting specialty competencies, DoD contract personnel should also have a basic understanding of the relatively few but important peculiarities of contracting for FMS.



As background, we will briefly review the overall FMS process.



As discussed earlier, the USG's FMS program is intended to build relationships with foreign partners and to achieve both national security and foreign policy goals. However, the USG is not alone. Other nations that have developed defense systems are also pursing similar goals with international partners. In this context, the US is in a global competition for international defense business and is typically competing against one or more non-US systems in international purchasers' source selection processes.

International purchasers must consider many factors in making their procurement decision. Some of the obvious considerations include system performance capabilities, total cost, system delivery lead-times, alliance & coalition interoperability, sustainment support packages along with the political and economic relationship considerations. Other, perhaps less obvious, factors include the extent of technology sharing, offsets/industrial participation (to discussed later), and the degree of partnership and transparency in the procurement process.



In the global defense competitive environment, DoD prefers that international partners select US origin systems. The reasons for this preference include: promoting US foreign policy, enhancing military relationships, achieving interoperability, creating procurement economies of scale, and sustaining the US defense industrial base.

The DoD contracting community is major factor in achieving these outcomes. The DoD contracting community enhances US international competitiveness by creating value through the skillful exercise of their contracting specialties and through the manner in which they effectively interface and communicate with the international partner's representatives.

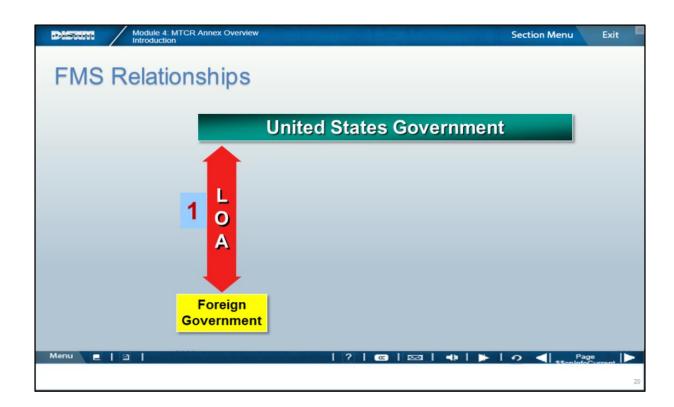
The underlying point to recognize is that contracting for FMS requirements is more than just another business transaction that delivers a given item or service. The DoD contracting process itself offers an opportunity to build international relationships that contribute to achieving broader national security and foreign policy goals.



The Security Assistance Management Manual (SAMM) requires that acquisition for FMS be executed according to existing DoD regulations and procedures. As such, the FMS program essentially offers international partners the opportunity to access the extensive procurement infrastructure and structured contracting processes to fulfill their own defense requirements. In other words, FMS is an opportunity for international partners to use the DoD as one of their procurement and supply agents.

The well-structured DoD procurement process, with built in checks and balances, is intended to acquire quality products at fair prices. When this contracting process is exercised through FMS, it offers certain benefits and protections to the international partner. This SAMM policy states that the benefits and protections inherent in the DoD contracting process is one of the principal reasons why international partners may elect to procure through FMS rather than other alternatives.

Once again, DoD's contracting process is an essential component in executing FMS programs. The work of the contracting community can initially influence an international partner's decision to select a US system in the global competitive environment. Additionally, the contracting community's performance in executing procurements significantly influence the foreign partner's opinion regarding the overall value of the FMS program.

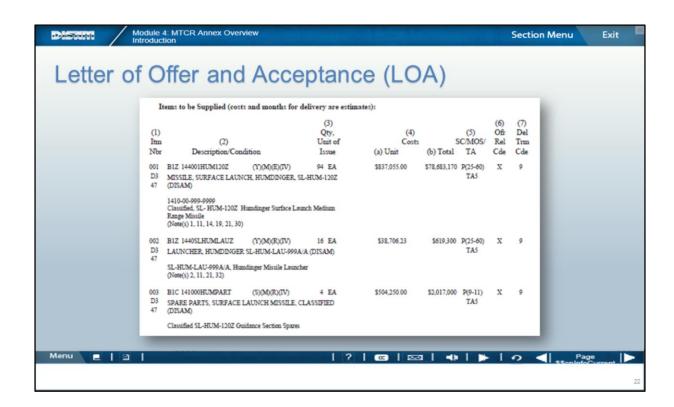


Under the FMS program, the foreign government is purchasing directly from the USG. The USG is the seller and the foreign partner is the buyer. A document called a Letter of Offer and Acceptance (LOA) serves as the sales agreement between the two governments. The LOA serves several key purposes. It is legal authority for the defense export sale, it documents the international partner's requirements, and it serves as the funding source for those requirements.

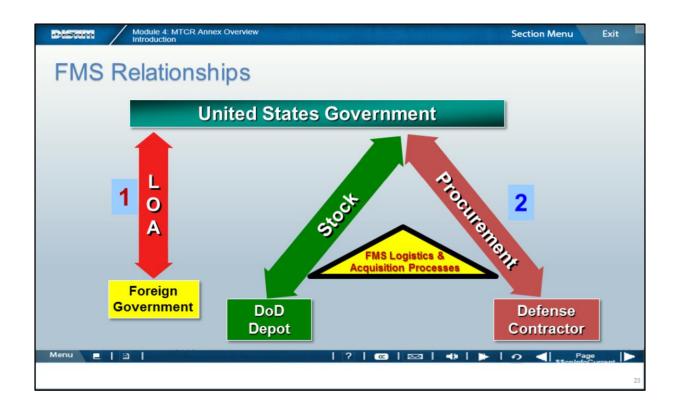
Defense industry is not a direct party in the LOA sales agreement. However, industry often interfaces directly with the foreign government in marketing their respective defense articles and services in the pre-LOA phase. The USG, through its contracting community, may also obtain inputs from industry as the USG develops cost and delivery lead time estimates for the LOA.

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For illustration and familiarization purposes, this is the first page from a sample LOA. This first page includes key summary information about the FMS sale to include a reference to purchaser's request, a narrative summary of the overall sale, the estimated total sale cost, the initial deposit requirement, the offer expiration date and the signatures of DSCA, the US implementing agency and the purchaser.

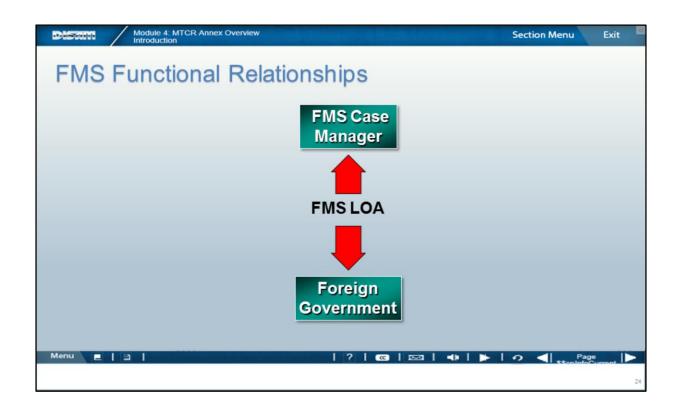


LOAs like contracts, break the overall LOA requirement down into logical subcomponents. These sub-indentures of the LOA are referred to as LOA lines. Depending on the nature of the international partner's requirement, an LOA may contain just one or many lines. By policy, all items of major defense equipment must be broken out on their own separate LOA line with the specific quantity of items being identified. The LOA case manager implements the various lines of the LOA out to the respective acquisition or logistics organizations for execution. Please note the column headings across the top of this LOA page. The column (5) heading abbreviation "SC" stands for source code. The three most common source codes appearing on the LOA are: "P" indicating from new procurement, "S" indicating from existing stock, and "X" indicating the line will be sourced from a combination of both new procurement and stock.

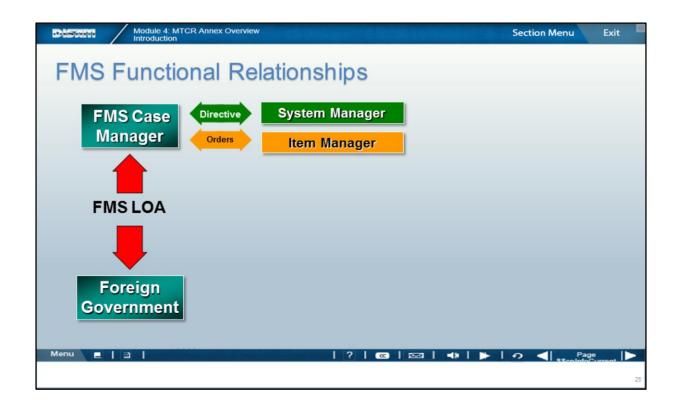


Once the LOA has been accepted by the customer, the USG essentially treats the customer's requirements and as if they are USG requirements. If the USG cannot support the LOA requirements from existing inventories, the USG will exercise its Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) contracting processes to solicit, negotiate, award and administer a contract with industry to fulfill the requirements in the LOA. In this contract relationship, the USG is the buyer and industry is the seller.

Under FMS there is no direct contractual relationship between the foreign government and defense industry. Industry receives contractual direction from the USG. The foreign government channel to influence or change the contractual direction is through interface with the USG by amending or modifying the LOA.

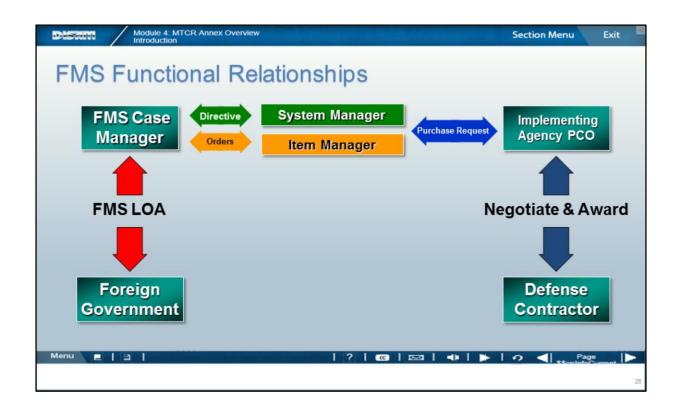


This view expands the overall USG role and identifies the internal functional FMS acquisition relationships. The SAMM states that each FMS LOA will be assigned to an individual that will be responsible for the managing the LOA from initial development to final closure. Individuals assigned to these positions are called FMS case managers.

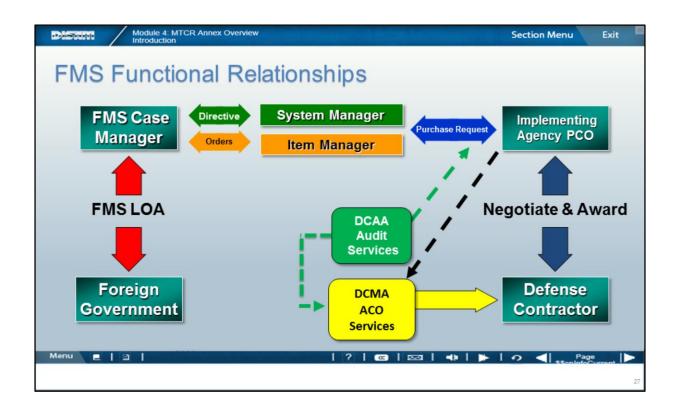


FMS case managers themselves do not issue material from inventory nor do they directly initiate procurement action. Case managers coordinate the LOA development and, if the LOA is accepted, case managers implement the LOA requirements and funding out to the DoD acquisition and logistics infrastructure nodes that normally manage the respective items or services for DoD. Case managers perform this responsibility by issuing LOA directives to system program offices for major items or by generating Military Standard Requisitioning and Issue Procedures (MILSTRIP) orders to inventory control points for secondary and support items.

DoD places system program managers in charge of managing entire weapon systems and item managers in charge of managing inventories of individual items. Weapon system procurements will be routed to the applicable weapon system program management office and requirements for secondary support items are routed to the applicable item manager.

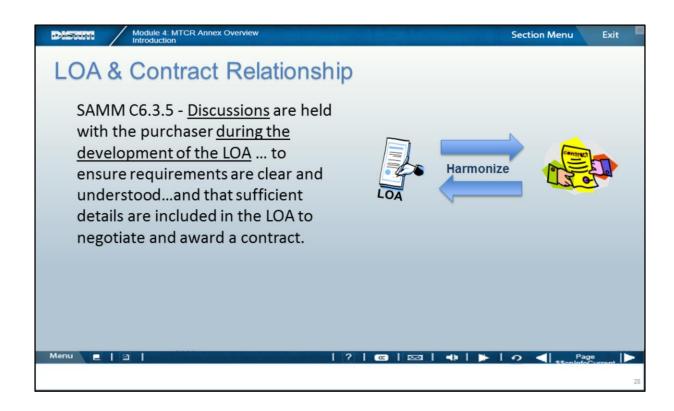


If procurement action is required, system managers or item managers will develop the procurement requirements package that will cite the LOA as the funding source. A Procuring Contracting Officer (PCO) within the implementing agency will then exercise the FAR and DFARS processes to solicit industry, select a vendor and to negotiate and award a contract.

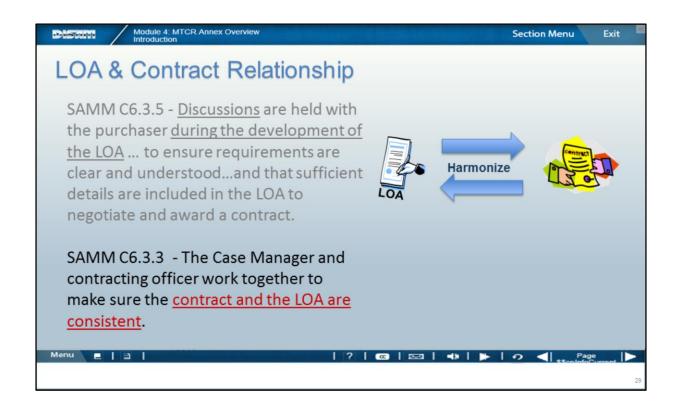


The PCO may enlist support from the Defense Contract Audit Agency (DCAA) and the Defense Contract Management Agency (DCMA) in both pre-award support and post-award contract administration. Typically, following contract award, the PCO at the implementing agency will delegate contract administration to the applicable DCMA office at or near the defense contractor's facility. DCMA's contract administration services include quality assurance activities as well as inspection and acceptance of the contractor's performance on behalf of the USG.

In the FMS LOA pricing structure, a separate Contract Administration Services (CAS) fee is applied to items or services sourced from procurement. The CAS funds are used by DSCA to reimburse DCMA and DCAA for their services in support of FMS contracts.

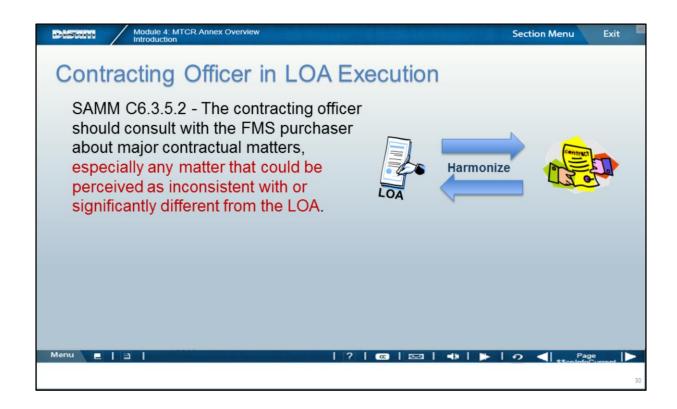


Although the LOA and procurement contract are two distinct documents, there is an integrated relationship between the two. The LOA needs to sufficiently define the international partner's requirement and to provide the necessary funding to support the future contracting actions. The desired outcome to develop an LOA that meets customer expectations and that is executable under the FAR and DFARS provisions.

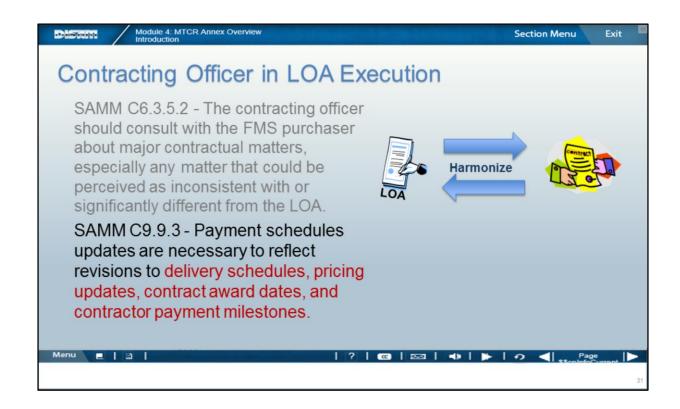


The SAMM emphasizes the importance of the contracting community's involvement in the initial LOA development. There should be coordination between the US case manager that develops, implements and oversees LOA execution and the contracting officer that will award and administer the procurement contract.

The LOA should not commit the USG to actions in support of the foreign partner that are not executable within the context of the FAR and DFARS provisions. The content of the LOA and the procurement contract must be harmonized.

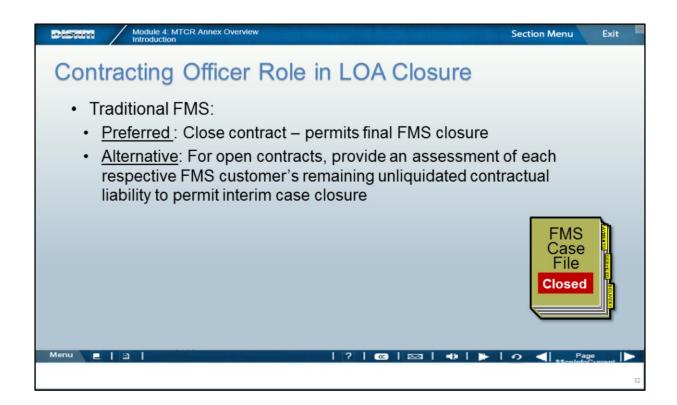


Ultimately, the contract deliverables are for the benefit and use by the international partner. The international partner's expectations are largely formed by the content of the initial LOA which provides basic cost and delivery estimates. Any deviations from the LOA scope need to be discussed with the international partner to obtain their input regarding the respective issue and to ensure that their expectations are in alignment with the actual contracted deliverables.



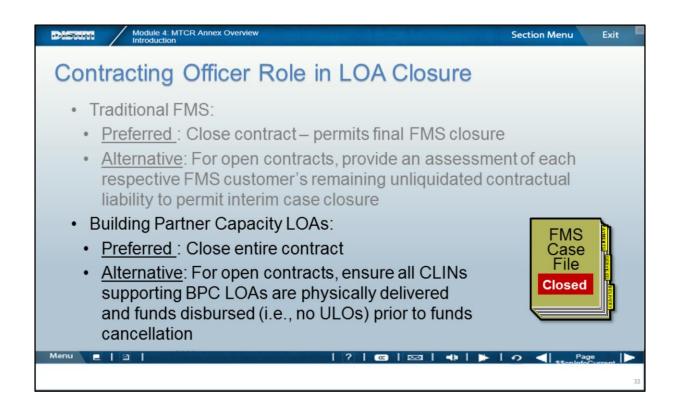
Additionally, most LOAs include a payment schedule. The LOA payment schedule identifies the projected quarterly payment requirements that the FMS customer must make to the USG to support the LOA's anticipated financial execution profile. SAMM policy requires FMS case managers to issue updates to the payment schedule as real world adjustments occur in contract execution. Historically, this has been a point of dissatisfaction by FMS customers because timely updates to the payment schedules were not being made. As a result, the USG generally continued to collect cash from the FMS customer according to the original estimated rate of contract execution rather than at the actual rate of contract disbursements. Consequently, funds in excess of disbursement requirements accumulated in the customer's FMS trust fund account when these funds could have been allocated to other immediate customer financial requirements.

The acquisition management community needs to initially provide the case manager initial LOA cost estimates and then provide updates on the actual contract financial performance so that a realistic LOA payment schedule can be maintained by means of LOA amendments and modifications.



Ultimately, all LOAs must be closed. FMS LOA closure means that all defense articles and services initiated under the LOA are both physically delivered and that the corresponding financial transactions have processed and are in balance. Key to LOA closure is the complete liquidation of all financial obligations initiated using LOA funds. The preferred LOA closure scenario is to close all contracts associated with the respective LOA prior to LOA closure.

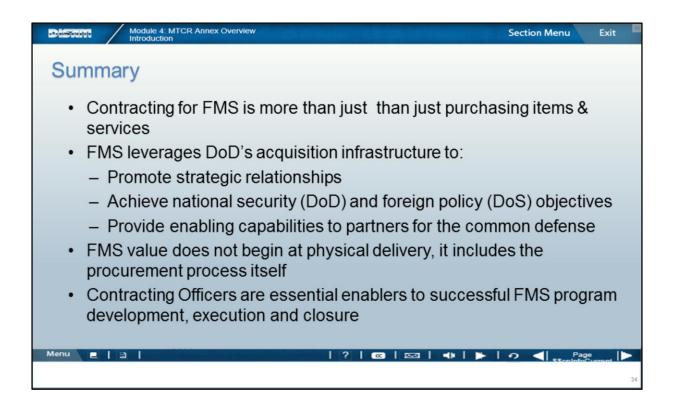
As an alternative for traditional FMS, an LOA can be placed into an interim closed status by validating all remaining unliquidated obligation (ULO) amounts. The value of the validated ULO is placed into the customer country's case closure suspense account (CCSA) and the LOA is interim closed. An future disbursements against the ULO are made from the CCSA.



Building Partner Capacity LOAs are funded with USG appropriated funds. These funds must be obligated prior to expiration and must be disbursed prior to cancellation. The preferred method to closed the entire contract prior to funds cancellation.

The alternative for contract supporting other requirements is to ensure that all contract line items (CLINS) supporting BPC LOAs are physically complete and that all applicable payments have been disbursed with no remaining Unliquidated Obligations prior to funds cancellation.

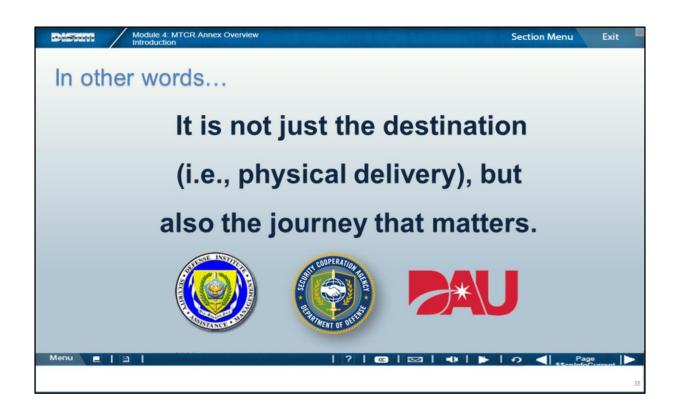
In either situation, traditional FMS or BPC, the contracting officer plays an essential role in case closure. Contracts must be financially managed to ensure that ULO amounts are periodically validated to support remaining contract requirements. Any obligated funds that are not required should be deobligated for return to the international partner and to ensure timely LOA closure. Contracting personnel must support case managers by identifying the validity of residual ULO amounts in support of the LOA closure process.



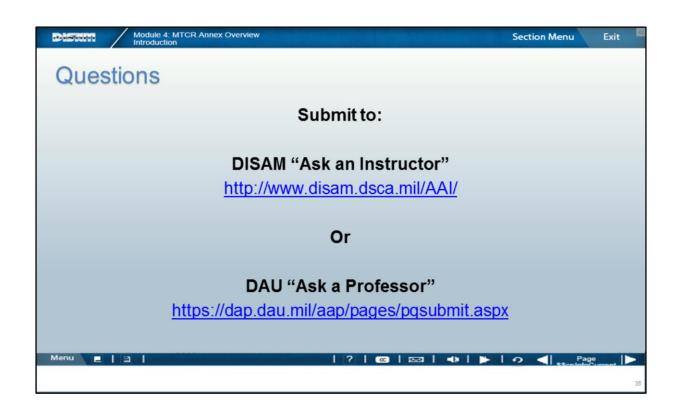
A primary theme of Part 1 in this learning guide has been to emphasize that the contracting officer's role in FMS is more than just buying items and services. For the DoD, the FMS acquisition process itself presents a strategic opportunity to leverage its acquisition infrastructure to promote international defense relationships, achieve national security and foreign policy goals and to provide our partners with defense capabilities that mutually benefit both the US and the partner nation.

These FMS benefits do not just begin to accrue at the point of physical delivery. The benefits actually have the potential to begin within the acquisition process itself. The quality performance of the contracting community in executing FMS procurements contributes towards a positive view of the US as a defense supplier when competing in the global defense market.

Contracting officers are essential enablers to successful FMS programs. Contracting officers provide key source information during LOA development that helps establish realistic international purchaser expectations. Successful LOA execution is largely dependent upon the knowledge, skills and experience of the contracting officer and the entire acquisition team. Timely and accurate LOA closure relies on the contracting officer's actions to ensure proper contract payments and maintenance of remaining ULOs.



In other words, FMS is not just about getting items and services delivered - on schedule, within cost. It is also about partnering. International purchasers have expressed a desire to partner with DoD in the buying process itself. Contracting officers are requested to realistically consider how the international partner can become part of the procurement journey rather than just waiting on the sidelines for the physical delivery to occur.



DSCA's Defense Institute of Security Assistance Management (DISAM) and the Defense Acquisition University collaborated in producing this presentation. Both schools offer web based programs to submit questions. DISAMs program is "Ask an Instructor" and DAU's program is "Ask a Professor". Please feel free to submit questions via these programs. Questions predominately about the FMS process and policy should be submitted to DISAM. Questions about core contracting issues should be submitted to DAU.

If you know other contracting personnel that work with FMS requirement, we request you refer them to this learning module.

Thank you for taking the time to find out more information about "Contracting for FMS".